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Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Ex Parte No. 582, *Public Views on Major Rail Consolidations*

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an executed original and ten (10) copies of the Comments of the Canadian Wheat Board. Also enclosed is a 3.5-inch diskette containing a WordPerfect 7.0 formatted copy of this filing. An extra copy of the filing is enclosed for stamping and return to our office.

Should you have any questions concerning this filing, please do not hesitate to contact the undersigned. Thank you for your cooperation and assistance in this matter.

Respectfully submitted,

Thomas W. Wilcox

Thomas W. Wilcox

Enclosures

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Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Ex Parte No. 582, *Public Views on Major Rail Consolidations*

Dear Secretary Williams:

The Canadian Wheat Board (CWB) is appreciative of the opportunity provided by the Surface Transportation Board to comment on the potential downstream affects of the proposed Burlington Northern Santa Fe (BNSF) and Canadian National (CN) railway merger.

Canada exports approximately 20 million tonnes of wheat and barley annually. The CWB is responsible for the marketing and logistics of wheat and barley sold for export and domestic consumption on behalf of approximately 100,000 Western Canadian producers. The CWB's responsibilities include negotiating rail transportation arrangements on behalf of the producers. Each year products marketed by the CWB incur approximately $700,000,000 in rail freight charges.

Canada is a large country with a relatively small population and the production area in Western Canada is a long distance from tidewater. Thus, the Western Canadian producer is virtually captive to rail transportation. It is therefore imperative that Canadian producers have an efficient, economical and competitive rail environment.

For the above reasons, the CWB is extremely concerned about the potential downstream affects of the proposed merger of BNSF and CN railways.

Timing of Proposed Merger:

The North American rail industry has been undergoing tremendous change during the last several years. Since the passage in the United States of the 1981 Staggers Rail Act, the number of major U.S. railways has declined from over forty-two to four. Virtually all of these mergers have removed a competitive alternative for a portion of traffic destined to the United States, mostly by way of takeovers of receiving rail carriers. The horrendous and well-documented service problems that transpired as a result of the BNSF and Union Pacific-Southern Pacific (UPSP) mergers are still fresh in the minds of many shippers. Furthermore, our U.S. customers who rely on rail service over the previous Conrail network continue to report service problems.

In Canada, it has been only five short years since CN was privatized. Since the privatization, Canadian grain producers have not seen a decrease in overall grain freight rates. The merger of

CN with the Illinois Central Railway (IC) quickly followed the privatization of CN. The impact on Canadian grain producers of this merger is not yet fully known.

The CWB is concerned that rail customers have yet to realize benefits from the recent mergers. Furthermore, the impact on the shipping community of the rationalization of rail carriers is still not fully understood and accordingly the timing of this proposed merger is questionable. Many of the claims of shipper benefits currently being made by BNSF and CN are the same as the ones that were made to support the BN-SF, UP-SP, CSX-NS-Conrail, and CN-IC mergers. However, the CWB at this point in time can not clearly determine if any of these benefits have actually occurred. In fact our experience at this point in time indicates that mergers have not provided the claimed benefits to shippers.

The CWB respectfully urges the STB to seriously consider the timing of this merger and the uncertainty associated with the impact of recent rail mergers in its deliberation of the potential downstream effects of this merger.

Potential effect on Further Rail Consolidations:

The shipping community in both the United States and Canada has expressed concerns that this particular merger will lead to another series of rail mergers and consolidations. In Canada, increased merger activity could be devastating to Western Canadian producers. Currently, we have two major Canadian railways operating, for the most part parallel to each other virtually from coast to coast. Although a two-railway system does not provide for effective competition, the presence of a third competitor south of the Canadian border acts to some degree as a competitive lever. If the proposed BNSF-CN merger were to proceed this competitive option would no longer exist.

It is also our belief that the Canadian Pacific Railway (CP) will be placed in a very tenuous position. CP recently stated that over 90% of its grain business is located within 50 miles of either BN or CN.[1] The new combined BNSF-CN would be in an excellent position to use predatory pricing on this traffic to eventually force CP to merge with another railway, or possibly become insolvent. The long-term effects of either scenario would be devastating to Canadian producers.

Downstream Effect on Canadian Pro-Competitive Railroad Legislation

Canadian legislation has historically acknowledged the inherent market power of the two major Canadian railways and accordingly provides a higher level of shipper protection than U.S. rail legislation. Canadian legislation currently has four significant provisions that do not exist in the U.S. a) Interswitching, b) Competitive Line Rates, c) Joint Running Rights, and d) Final Offer Arbitration.

Clearly, the great majority of shareholders in the new organizational structure will reside in the U.S. Consequently, there will be tremendous pressure to harmonize the legislative environment and this could result in a lessening of shipper protection in Canadian legislation.

1 CP Response to the Presentation of Mr. James Foran and the Paper by Mr. Terry Whiteside to the Competition and Safeguards Working Group of the Kroeger Grain Facilitation Process, July 6, 1999.

In order to avoid this unfortunate consequence, the CWB respectfully urges the STB to examine the possibility of imposing the adoption of Canadian style shipper protections on the proposed merged entity.

Effects of Proposed Merger on the Future of Railway Open Access:

Recently Transport Canada commissioned a review of the Canadian Grain Handling and Transportation Supply Chain (CGHTS). One of the fundamental premises of the review is that competition should become the prime motivator in the reform of the CGHTS. Specifically concerning rail competition, the review recommends the opening up of the Canadian rail system to qualified new operators who could obtain running rights over existing lines owned by CN and CP.

During the review's implementation process, CN expressed the opinion that open access would allow for U.S.-based railways to gain access to operate on CN lines in Canada.[2] CN claimed this would subject them to unfair competition. Furthermore, CN has subsequently stated that it perceives the BNSF as a potential competitor that would utilize open access legislation. It is logical then to conclude that this proposed merger will reduce the level of competition in the Canadian rail environment.

The positive impact of open access on shippers has been proven in other rail jurisdictions and in other network industries. The opening of the Canadian rail system to new potential operators would have positive effects on the level of competition, thereby decreasing rates and increasing service levels.

The CWB therefore encourages the STB to explore, in its examination of potential downstream effects of this proposed merger, the anti-competitive implications of BNSF no longer existing as a separate entity from CN in competition with BNSF.

Conclusions:

Canada and the United States are the world's two largest trading partners and have enjoyed mutually beneficial trading practices for over 100 years. The success of these trading practices, including the movement of agricultural products and the significant number of industries that this trade supports, is dependent upon the ability to economically transport goods.

The CWB respectively encourages the STB to consider all potential downstream effects of this merger. It is becoming increasingly apparent that the United States and Canadian rail environments are moving towards a North American integrated rail system. The integration of the rail systems into increasingly larger railways controlled by a decreasing number of corporate

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2 Issues With the Implementation of Open Access, Presented by CN to the Working Group on Competition and Safeguards, Kroeger Grain Facilitation Process, June 23 1999.

entities is greatly reducing the number of viable competitive options for rail customers on both sides of the border.

Respectfully submitted,

James E. McLandress/TWW

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